Kinsey v Stake Ctr. Locating, Inc.
2025 NY Slip Op 32418(U)
July 9, 2025
Supreme Court, New York County
Docket Number: Index No. 161185/2023
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

---X

JAQUAN KINSEY

Plaintiff,

- v -

STAKE CENTER LOCATING, INC.,

Defendant.

---X

INDEX NO. 161185/2023

MOTION DATE 02/21/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for ORDER MAINTAIN CLASS ACTION .

In this putative class action plaintiff, Jaquan Kinsey, moves pursuant to CPLR §§ 901 & 902 to certify this case as a class action, with the class defined as "All Utility Locators who worked for Stake Center Locating in New York at any time since April 1, 2017, to [present]" ("Class" or "Class Members"), and to certify a subclass defined as "All Utility Locators who worked for Stake Center Locating in New York City at any time since April 1, 2017 to [present]." Defendant opposes the motion arguing that plaintiff has failed to establish the required elements for class certification.

BACKGROUND

Stake Center Locating, Inc. ("SCL") is a utility locating company, a business that locates and identifies underground utilities, so they are not damaged when construction or excavation is being done (NYSCEF Doc No 16 ¶ 3). Plaintiff worked as a Utility Locator for SCL in the New York City area from August 2019 to August 2022 (NYSCEF Doc No 1 ¶ 31). Plaintiff alleges wage and hour violations under New York Labor Law. For example, plaintiff alleges that he and

the class were forced to work through their lunch breaks, despite a half hour being taken out of their pay (*id*. at ¶ 99). Plaintiff also alleges that he and his class were forced to clock out before they got home despite SCL's alleged policy that its Utility Locators would be paid door-to-door (NYSCEF Doc No 19 at 52:25 – 54:2; *see also* NYSCEF Doc No 21). Plaintiff further alleges that because of these policies, he and his class were not only deprived of pay for those specific hours, but that they were also denied overtime pay, since including those hours would have increased their weekly hours above the 40 hours required for overtime pay (NYSCEF Doc No 1 ¶ 102). Plaintiff alleges that by enacting these policies, among others, SCL willfully violated New York Labor Law regulations depriving him and his class of the wages they are owed (*id.* at ¶ 176 – 178).

DISCUSSION

Class Certification CPLR §§ 901 and 902

The class action statute should be liberally construed (*Diamond v New York City Hous. Auth.*, 179 AD3d 525, 527 [1st Dept 2020]) and provides that a class action may be maintained if:

> (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
> (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
> (4) the representative parties will fairly and adequately protect the interests of the class; and
> (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(CPLR § 901[a])

Once a plaintiff satisfies these prerequisites a court must consider the following factors in determining whether the action may proceed as a class action:

> (1) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
> (2) The impracticability or inefficiency of prosecuting or defending separate actions;
> (3) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
> (4) The desirability or undesirability of concentrating the litigation of the claim in the particular forum;
> (5) The difficulties likely to be encountered in the management of a class action.

(CPLR § 902)

a. Numerosity

Defendant argues that plaintiff's proposed classes lack the numerosity required to maintain a class action and contends that joinder would not be impracticable and would be preferable given the circumstances of the case. Plaintiff contends that numerosity is satisfied and that the particular facts of this case support a class action.

There is no set rule for the number of prospective class members that must exist before a class is certified (*Chua v Trim-Line Hitech Constr. Corp*., 225 AD3d 565 [1st Dept 2024]). "[R]ather, each case depends on the particular circumstances of the proposed class" (*Stewart v Roberts*, 163 AD3d 89, 94 [3d Dept 2018]). Smaller classes are appropriate, "where barriers of distance, cost, language, income, education or lack of information prevent those who are aware of their rights from communicating with others similarly situated" (*Borden v 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382, 399 [2014]). Here, plaintiff argues there are at least 30 individuals encompassed in the class definition and the NYC subclass contains 19 individuals. Since, the "legislature contemplated classes involving as few as 18 members" (*id*. at 399) plaintiff has established the element of numerosity.[1]

[1] While defendant argues that certain class members have signed a "Bonus Plan Agreement" which purports to include a class action waiver, defendant has not attached this agreement as an exhibit and plaintiff challenges the enforceability of these agreements. Regardless, defendant only alleges that 5 members signed this agreement and thus, numerosity can be established regardless of their enforceability.

b. Commonality

Defendant argues that plaintiff has failed to establish that there are common questions of law and fact, and that plaintiff relies on generic declarations from co-workers and purported class members which fails to satisfy his burden of establishing the commonality element. Plaintiff argues that because all of the class members were subject to the same allegedly unlawful policies that the element is satisfied.

The commonality element requires that "questions of law or fact common to the class predominate over any such questions affecting individual class members" (*Pludeman v N. Leasing Sys., Inc.*, 74 AD3d 420, 422 [1st Dept 2010]). A commonality analysis requires an inquiry to determine "whether the use of a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated" (*id*. at 423). Here, plaintiff alleges that SCL's practices violated New York Law by requiring its workers to, among other things, work through their lunch breaks and by failing to pay workers "door-to-door" despite the SCL handbook providing otherwise.

Plaintiff submits affidavits from former and current SCL employees and potential class members who aver that they were subjected to the same policies that plaintiff alleges in his complaint (NYSCEF Doc Nos 16 – 18). Further, SCL manager, Scott McCullough testified that "everyone is subject to the same standards" all employees are treated equally (NYSCEF Doc No 28 at 94:24 – 95:4, 114:5 – 116:25). Whether SCL's practices violate New York Law are common questions of law and fact that predominate over any questions affecting individual members. While inquiries into the amount of damages incurred by each individual member may be required "it is a long-held principle that the individualized proof required on issues such as damages ... of each class member does not preclude a finding that common questions of law or

fact predominate over individual questions" (*Maddicks v Big City Properties, LLC*, 34 NY3d 116, 126-27 [2019]). Therefore, the commonality element has been satisfied.

c. Typicality

"If it is shown that a plaintiff's claims derive from the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory ... [the typicality] requirement is satisfied" (*Pludeman v N. Leasing Sys., Inc.*, 74 AD3d 420, 423 [1st Dept 2010]). Typicality does not require identicality of issues and the typicality requirement is met even if the claims asserted by class members differ from those asserted by other class members." (*id.* at 423).

Here, plaintiff's claims arise from the same course of conduct of the class in that Kinsey alleges that he is entitled to unpaid overtime pay because of the time he was forced to work while "off the clock." To recover damages, Kinsey will have to prove the same wrongful conduct that the class would have to prove. Therefore, since Kinsey and the class's interests align, the typicality element has been satisfied.[2]

d. Representation of the Class

> "Whether the representative party will fairly and adequately protect the interest of the class involves a number of considerations– whether a conflict of interest exists between the representative and the class members, the representative's background and personal character, as well as his familiarity with the lawsuit, to determine his ability to assist counsel in its prosecution and, if necessary, to act as a check on the attorneys, and, significantly, the competence, experience and vigor of the representative's attorneys and the financial resources available to prosecute the action."

[2] While, defendant again notes that the members of the purported class who signed the "Bonus Plan Agreement" will be subject to an arbitration agreement and thus plaintiff's claims are not "typical" of those who signed the agreement, however even if these members are excluded from the lawsuit, plaintiff's claims are not antagonistic to these employees and thus, typicality is still satisfied (*see Tindell v Koch*, 164 AD2d 689, 694 [1st Dept 1991] [typicality satisfied so long as plaintiff's claims are not antagonistic with those of the other members of the class])

(*Pruitt v Rockefeller Ctr. Props.*, 167 AD2d 14, 24 [1st Dept 1991]).

SCL argues that plaintiff is not an adequate representation of his class due to some alleged inconsistencies in his deposition testimony. "To judge the adequacy of representation, courts may consider the honesty and trustworthiness of the named plaintiff" (*Savino v Computer Credit, Inc.*, 164 F3d 81, 87 [2d Cir 1998]). However, here the alleged inconsistencies do not implicate plaintiff's ability to adequately represent his class. Plaintiff has been consistent in his allegations and his willingness to act as a class representative in this matter (*compare to Alix v Wal-Mart Stores, Inc.*, 57 AD3d 1044 [3d Dept 2008] [held that plaintiff could not adequately represent class interests due to conflict of interests]). Therefore, plaintiff is an appropriate representation of his class and this element is satisfied.

e. Superiority

"[A] class action is the 'superior vehicle' for resolving wage disputes 'since the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in the class members have no realistic day in court.'" (*Stecko v RLI Ins. Co.*, 121 AD3d 542 [1st Dept 2014]); *see also Lavrenyuk v Life Care Servs., Inc.*, 198 AD3d 569 [1st Dept 2021]). Given the expense and burden of litigating individually coupled with the potential for the imposition of different and perhaps, incompatible standards, a class action is the superior method of litigating this matter. Therefore, the superiority requirement has been satisfied.

f. CPLR § 902

Having met all the prerequisites for CPLR § 901 (a), the CPLR § 902 factors also weigh in plaintiff's favor for class certification. As previously mentioned, the type of wage and hour claims in this matter do not favor separate actions, which would be less desirable, effective, and

cost-efficient (CPLR §§ 902[1]-[2]). Moreover, this Court is an appropriate forum since the class members work (or worked) in New York (CPLR § 902 [4]). Since there are no apparent difficulties in managing this class action as compared to the complications of managing individual actions (CPLR§ 902 [5]), the class will be certified.

Accordingly it is,

ORDERED that plaintiff's motion to certify a class consisting of all Utility Locators who worked for Stake Center Locating in New York at any time since April 1, 2017, to the present is granted; and it is further

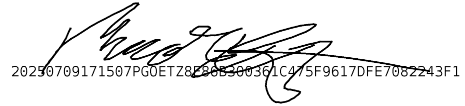
ORDERED that plaintiff's motion to certify a subclass consisting of all Utility Locators who worked for Stake Center Locating in New York City at any time since April 1, 2017, to present is granted; and it is further

ORDERED that plaintiff Jaquan Kinsey is appointed representative of the class; and it is further

ORDERED that Michael Josephson, Andrew Dunlap, Richard Schreiber, Richard (Rex) Burch, Joseph A. Fitapelli, Armando A. Ortiz, and Dana M. Cimera, are appointed as class counsel; and it is further

ORDERED that the parties shall meet and confer regarding a class notice within twenty (20) days of the date of this order and within ten (10) days thereafter email the proposed class

notice to the Part 47 clerk for court approval.



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7/9/2025				PAUL A. GOETZ, J.S.C.		
DATE						
CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION	
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE